

PT 99-43

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**LENA COMMUNITY TRUST FUND, INC.
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 98-PT-0063

**Real Estate Exemption
For 1995 Tax Year**

P.I.N. 11-07-33-102-017

Stephenson County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Robert Eden on behalf of Lena Community Trust Fund, Inc.

SYNOPSIS: This proceeding raises the issue of whether Stephenson County Parcel Index Number 11-07-33-102-017 (hereinafter the “subject property”) should be exempt from 1995 real estate taxes under sections 15-65 of the Property Tax Code. 35 ILCS 200/15-65.

This controversy arose as follows:

On May 2, 1995, the Lena Community Trust Fund, Inc. (hereinafter “applicant”), filed a Property Tax Exemption Complaint with the Stephenson County Board of Review. The Board reviewed the applicant’s complaint and on April 12, 1996, recommended that the exemption be granted. On December 12, 1996, the Illinois

Department of Revenue rejected the Board's recommendation concluding that the property was not in exempt ownership and not in exempt use. The Applicant filed a timely appeal from the Department's denial of exemption. On November 16, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel not be exempted from 1995 real estate taxes.

FINDINGS OF FACT

1. Dept. Ex. No. 1 and Dept. Ex. No. 2 establish the Department's jurisdiction over this matter and its position that the subject parcel was not in exempt use or exempt ownership during 1995.
2. The Applicant acquired title to the subject property on March 31, 1993, by means of a warranty deed. App. Ex. No. 6.
3. The subject property consists of 2.69 acres of land, which is improved with a two level building.¹ The lower level consists primarily of a large meeting hall (29'6" x 43'10") and 5 smaller meeting rooms. The upper level consists primarily of a large main hall (51' x 52') and a kitchen. App. Gr. Ex. Nos. 10A, 10B, 12C; Tr. pp. 22-24.
4. On August 29, 1991, the applicant was incorporated under the General Not for Profit Corporation Act of Illinois. App. Ex. Nos. 1, 2.

¹ At the hearing, the applicant referred to another parcel of land, which intersects the subject property. Tr. pp. 12-15. This second parcel was either .69 acres or .81 acres in size and appears to have been assigned Parcel Index Number 11-07-33-102-020. App. Gr. Ex. No. 9B; Tr. p. 15. This second Parcel Index Number was not included in the applicant's original application for exemption. Thus, neither the Board nor the Department ever considered whether this second parcel qualifies for exemption. Dept.

5. The applicant's articles of incorporation provide that the applicant was organized (1) to collect and distribute money for charitable purposes; (2) "to assist in harmonizing and making more efficient the work of charitable organizations in the local community;" and (3) "to manage a community center used for public purposes." App. Ex. No. 1.
6. The applicant's bylaws provide *inter alia* that:
 - (a) "There shall be no dues payable by any member" and
 - (b) "The trustees of the Corporation shall be nine in number consisting of 4 members of the Lena Lions Club, 1 spouse of a Lena Lions Club member; 1 member of the Lena JayCees, 1 member of the Lena American Legion or Legion Auxiliary, 1 at large member selected by the Lena Village Trustees, and 1 member of the Lena Women's Club." App. Ex. No. 3.
7. None of the trustees or corporate officers receives compensation for their services. Tr. p. 25.
8. The Internal Revenue Service granted the applicant an exemption from federal income taxes on February 18, 1992, pursuant to section 501(c)(3) of the Internal Revenue Code.
9. The applicant has no capital, capital stock, or shareholders. App. Ex. Nos. 1, 2, 3.
10. In 1995, the applicant derived 81% of its revenues from public and private donations and 19% of its revenues from rental fees. App. Ex. No. 15.

Gr. Ex. No. 1. Accordingly, I do not have jurisdiction to consider the status of this

11. During 1995, the applicant leased portions of the building out to various groups according to a detailed fee schedule which listed rental fees ranging from as low as \$5 per day, for use of the small lower level meeting rooms by non-profit groups, up to \$350 per day, for Friday or Saturday use of the large upper level main hall and kitchen. App. Ex. No. 13; Tr. pp. 20-25.
12. The 1995 usage of the building was as follows:

LOWER LEVEL

Large Meeting Room (22 total uses)

- 11 Lions Club gatherings
- 5 parties/dances/family gatherings
- 2 medical/health seminars
- 1 farmers' meeting
- 1 Illinois Department of Transportation meeting
- 1 Lena Special Housing
- 1 Viking Insurance
- 1 farmers' bookkeeping service meeting

Small Meeting Rooms (84 total uses)

- 28 bank meetings
- 12 Lions Club board meetings
- 12 Jaycees meetings
- 12 Lena Community Trust meetings
- 5 Investment Club meetings
- 4 Bible Study
- 3 Lena Business and Professional Association
- 1 sorority
- 1 Stephenson County Highway Department
- 6 other miscellaneous meetings

UPPER LEVEL (43 Total Uses)

- 12 weddings
- 9 dances/parties
- 6 anniversaries
- 5 bank or medical organization meetings
- 4 fundraisers/charity events
- 3 Lions Club dinners
- 1 church dinner
- 1 Stephenson County Bar Association

second parcel.

1 open house

1 “Turkey Chasers” (nature of this organization/activity was not explained)

13. The rental fees never resulted in a profit and were simply used to help offset the applicant’s operating expenses. Tr. p. 25.
14. The Board could waive fees for individuals or organizations unable to pay. Tr. p. 26.
15. The Lena Village Board passed a resolution in support of a real estate exemption for the subject property. App. Ex. No. 11.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1995 tax year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for exemption should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore,

Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by “institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

Here, it was established that the applicant acquired title to the subject property on March 31, 1993. App. Ex. No. 6. Thus, the question becomes whether the applicant qualifies as an “institution of public charity” under the terms of Korzen. Korzen held that “institutions of public charity” share the following distinctive characteristics: (1) they have no capital stock or shareholders; (2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) they dispense charity to all who need and apply for it; (4) they do not provide gain or profit in a private sense to any person connected with it; and, (5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen *supra* at 157. These five characteristics are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution

serves the public interest and lessens the State's burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-69 (2nd Dist. 1995).

Here, the applicant would appear to generally meet the requirements for a charitable organization because it: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity; (3) does not limit who may use its facility; and (4) does not provide gain or profit in a private sense to anyone associated with the applicant. But, because the applicant generally charges fees for use of its facility, it could be argued that the applicant places obstacles in the way of those who would choose to use its facility.

Even assuming, *arguendo*, that the applicant qualifies as an institution of public charity, the subject property still does not qualify for exemption because the applicant failed to establish that the property was used exclusively for "charitable or beneficent purposes." 35 ILCS 200/15-65. "The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented." Korzen, *supra* at 156.

In making this determination, the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used. *Id.* Moreover, it is well settled that the term "exclusively used" means the primary purpose for which property is used and not any secondary or incidental purpose. *Id.*

In the case at hand, the evidence presented at hearing establishes that the subject property was primarily used for business meetings, club and organization meetings, and private social events. See Finding of Fact No. 11. Such social and business uses do not become charitable in nature merely because the applicant charged members of the community no fees or low fees. To hold otherwise would effectively obviate the charitable use requirement and allow property of charitable institutions to be exempt even where the charitable institution allowed commercial entities to use the property for purely commercial activities.

The applicant, in a well-written brief, raises two further points which merit discussion. First, the applicant cites the Lee County Circuit Court case Loveland Testamentary Trust v. Department of Revenue (No. 94-MR-8) in support of its claim of charitable use. Obviously, because Loveland is an unpublished decision and from a different circuit than is involved in the case at hand, its precedential value is limited. More importantly, following a careful review of Loveland and the facts of the instant case, I conclude that Loveland does not support a finding that the property at issue in the case at hand was used primarily for charitable purposes.

In Loveland, the Lee County Circuit Court concluded that a community center was in charitable use where it was used as a “meeting place where strangers coming to Dixon and vicinity to live will be welcome, get speedily acquainted and enter into the community.” Such usage is clearly distinct from the business and private social usage involved in the case at hand. Accordingly, I do not find Loveland to be persuasive authority since it is, in an important regard, factually distinct from the instant case.

The second point the applicant raises in its brief that merits discussion is the applicant's claim that the subject property should be exempt because it relieves a governmental burden. In support of this claim, the applicant correctly notes that there is substantial case law holding that relief of a governmental burden is a proper factor to consider when determining whether a charitable exemption should be granted. See generally Korzen, *supra* at 156-157; see also People v. Young Men's Christian Association, 365 Ill. 118, 122 (1937), (wherein it was stated that "[t]he reason for exemptions in favor of charitable institutions is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the State to care for and advance the interests of its citizens."). The applicant also correctly notes that "[o]ne of the accepted functions of government is the erection and maintenance of civic centers." See generally 30 ILCS 355/1 *et seq.*; 70 ILCS 205/1 *et seq.*

However, merely because an organization erects and maintains a building it considers a "civic center" does not necessarily mean that the building is actually being used for exempt purposes. As a general rule, the primary function of civic centers is to provide space for "public entertainment, exhibitions or conventions or to provide parking facilities related thereto" (30 ILCS 355/4(2)(f)); or "fairs, industrial, cultural, educational, theatrical, sports, trade and scientific exhibits, shows and events" (70 ILCS 335/5). After reviewing the evidence in this case, I conclude that the applicant did not present clear and convincing evidence establishing that the subject property was used for such purposes in 1995. Rather the evidence presented establishes that in 1995 the primary use of the subject property was for business meetings, club and organization meetings, and private social events. The government is under no obligation to provide a building to house such

activities. Accordingly, it can not be fairly said that the applicant's activities relieved governmental burdens.

For the reasons set forth above, I recommend that the subject parcel be denied exemption from 1995 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge